

SSB 5586 - S AMD 76

By Senators Hargrove, Morton, Doumit

ADOPTED 03/11/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that lead hazards
4 associated with lead-based paint represent a significant and
5 preventable environmental health problem. Lead-based paint is the most
6 widespread of the various sources of lead exposure to the public.
7 Census data show that one million five hundred sixty thousand homes in
8 Washington state were built prior to 1978 when the sale of residential
9 lead-based paint was banned. These are homes that are believed to
10 contain some lead-based paint.

11 Lead negatively affects every system of the body. It is harmful to
12 individuals of all ages and is especially harmful to children, fetuses,
13 and adults of childbearing age. The effects of lead on a child's
14 cognitive, behavioral, and developmental abilities may necessitate
15 large expenditures of public funds for health care and special
16 education. The irreversible damage to children and subsequent
17 expenditures could be avoided if exposure to lead is reduced.

18 (2) The federal government regulates lead poisoning and lead hazard
19 reduction through:

- 20 (a)(i) The lead-based paint poisoning prevention act;
21 (ii) The lead contamination control act;
22 (iii) The safe drinking water act;
23 (iv) The resource conservation and recovery act of 1976; and
24 (v) The residential lead-based paint hazard reduction act of 1992;

25 and

- 26 (b) Implementing regulations of:
27 (i) The environmental protection agency;
28 (ii) The department of housing and urban development;
29 (iii) The occupational safety and health administration; and

1 (iv) The centers for disease control and prevention.

2 (3) In 1992, congress passed the federal residential lead-based
3 paint hazard reduction act, which allows states to provide for the
4 accreditation of lead-based paint activities programs, the
5 certification of persons completing such training programs, and the
6 licensing of lead-based paint activities contractors under standards
7 developed by the United States environmental protection agency.

8 (4) The legislature recognizes the state's need to protect the
9 public from exposure to lead hazards. A qualified and properly trained
10 work force is needed to assist in the prevention, detection, reduction,
11 and elimination of hazards associated with lead-based paint. The
12 purpose of training workers, supervisors, inspectors, risk assessors,
13 and project designers engaged in lead-based paint activities is to
14 protect building occupants, particularly children ages six years and
15 younger from potential lead-based paint hazards and exposures both
16 during and after lead-based paint activities. Qualified and properly
17 trained individuals and firms will help to ensure lead-based paint
18 activities are conducted in a way that protects the health of the
19 citizens of Washington state and safeguards the environment. The state
20 lead-based paint activities program requires that all lead-based paint
21 activities be performed by certified personnel trained by an accredited
22 program, and that all lead-based paint activities meet minimum work
23 practice standards established by the department of community, trade,
24 and economic development. Therefore, the lead-based paint activities
25 accreditation, training, and certification program shall be established
26 in accordance with this chapter. The lead-based paint activities
27 accreditation, training, and certification program shall be
28 administered by the department of community, trade, and economic
29 development and shall be used as a means to assure the protection of
30 the general public from exposure to lead hazards.

31 (5) For the welfare of the people of the state of Washington, this
32 chapter establishes a lead-based paint activities program within the
33 department of community, trade, and economic development to protect the
34 general public from exposure to lead hazards and to ensure the
35 availability of a trained and qualified work force to identify and
36 address lead-based paint hazards.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires otherwise.

3 (1) "Abatement" means any measure or set of measures designed to
4 permanently eliminate lead-based paint hazards.

5 (a) Abatement includes, but is not limited to:

6 (i) The removal of paint and dust, the permanent enclosure or
7 encapsulation of lead-based paint, the replacement of painted surfaces
8 or fixtures, or the removal or permanent covering of soil, when lead-
9 based paint hazards are present in such paint, dust, or soil; and

10 (ii) All preparation, cleanup, disposal, and postabatement
11 clearance testing activities associated with such measures.

12 (b) Specifically, abatement includes, but is not limited to:

13 (i) Projects for which there is a written contract or other
14 documentation, which provides that an individual or firm will be
15 conducting activities in or to a residential dwelling or child-occupied
16 facility that:

17 (A) Shall result in the permanent elimination of lead-based paint
18 hazards; or

19 (B) Are designed to permanently eliminate lead-based paint hazards
20 and are described in (a)(i) and (ii) of this subsection;

21 (ii) Projects resulting in the permanent elimination of lead-based
22 paint hazards, conducted by certified firms or individuals, unless such
23 projects are covered by (c) of this subsection;

24 (iii) Projects resulting in the permanent elimination of lead-based
25 paint hazards, conducted by firms or individuals who, through their
26 company name or promotional literature, represent, advertise, or hold
27 themselves out to be in the business of performing lead-based paint
28 activities as identified and defined by this section, unless such
29 projects are covered by (c) of this subsection; or

30 (iv) Projects resulting in the permanent elimination of lead-based
31 paint hazards, that are conducted in response to state or local
32 abatement orders.

33 (c) Abatement does not include renovation, remodeling, landscaping,
34 or other activities, when such activities are not designed to
35 permanently eliminate lead-based paint hazards, but, instead, are
36 designed to repair, restore, or remodel a given structure or dwelling,
37 even though these activities may incidentally result in a reduction or
38 elimination of lead-based paint hazards. Furthermore, abatement does

1 not include interim controls, operations and maintenance activities, or
2 other measures and activities designed to temporarily, but not
3 permanently, reduce lead-based paint hazards.

4 (2) "Accredited training program" means a training program that has
5 been accredited by the department to provide training for individuals
6 engaged in lead-based paint activities.

7 (3) "Certified inspector" means an individual who has been trained
8 by an accredited training program, meets all the qualifications
9 established by the department, and is certified by the department to
10 conduct inspections.

11 (4) "Certified abatement worker" means an individual who has been
12 trained by an accredited training program, meets all the qualifications
13 established by the department, and is certified by the department to
14 perform abatements.

15 (5) "Certified firm" includes a company, partnership, corporation,
16 sole proprietorship, association, agency, or other business entity that
17 meets all the qualifications established by the department and performs
18 lead-based paint activities to which the department has issued a
19 certificate.

20 (6) "Certified project designer" means an individual who has been
21 trained by an accredited training program, meets all the qualifications
22 established by the department, and is certified by the department to
23 prepare abatement project designs, occupant protection plans, and
24 abatement reports.

25 (7) "Certified risk assessor" means an individual who has been
26 trained by an accredited training program, meets all the qualifications
27 established by the department, and is certified by the department to
28 conduct risk assessments and sample for the presence of lead in dust
29 and soil for the purposes of abatement clearance testing.

30 (8) "Certified supervisor" means an individual who has been trained
31 by an accredited training program, meets all the qualifications
32 established by the department, and is certified by the department to
33 supervise and conduct abatements, and to prepare occupant protection
34 plans and abatement reports.

35 (9) "Department" means the Washington state department of
36 community, trade, and economic development.

37 (10) "Director" means the director of the Washington state
38 department of community, trade, and economic development.

1 (11) "Federal laws and rules" means:

2 (a) Title IV, toxic substances control act (15 U.S.C. Sec. 2681 et
3 seq.) and the rules adopted by the United States environmental
4 protection agency under that law for authorization of state programs;

5 (b) Any regulations or requirements adopted by the United States
6 department of housing and urban development regarding eligibility for
7 grants to states and local governments; and

8 (c) Any other requirements adopted by a federal agency with
9 jurisdiction over lead-based paint hazards.

10 (12) "Lead-based paint" means paint or other surface coatings that
11 contain lead equal to or in excess of 1.0 milligrams per square
12 centimeter or more than 0.5 percent by weight.

13 (13) "Lead-based paint activity" includes inspection, testing, risk
14 assessment, lead-based paint hazard reduction project design or
15 planning, or abatement of lead-based paint hazards.

16 (14) "Lead-based paint hazard" means any condition that causes
17 exposure to lead from lead-contaminated dust, lead-contaminated soil,
18 or lead-contaminated paint that is deteriorated or present in
19 accessible surfaces, friction surfaces, or impact surfaces that would
20 result in adverse human health effects as identified by the
21 administrator of the United States environmental protection agency
22 under the toxic substances control act, section 403.

23 (15) "State program" means a state administered lead-based paint
24 activities certification and training program that meets the federal
25 environmental protection agency requirements.

26 (16) "Person" includes an individual, corporation, firm,
27 partnership, or association, an Indian tribe, state, or political
28 subdivision of a state, and a state department or agency.

29 (17) "Risk assessment" means:

30 (a) An on-site investigation to determine the existence, nature,
31 severity, and location of lead-based paint hazards; and

32 (b) The provision of a report by the individual or the firm
33 conducting the risk assessment, explaining the results of the
34 investigation and options for reducing lead-based paint hazards.

35 NEW SECTION. **Sec. 3.** (1) The department shall administer and
36 enforce a state program for worker training and certification, and
37 training program accreditation, which shall include those program

1 elements necessary to assume responsibility for federal requirements
2 for a program as set forth in Title IV of the toxic substances control
3 act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint
4 hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R.
5 Part 745, Subparts L and Q (1996), and Title X of the housing and
6 community development act of 1992 (P.L. 102-550).

7 (2) The department is authorized to adopt rules that are consistent
8 with federal requirements to implement a state program. Rules adopted
9 under this section shall:

10 (a) Establish minimum accreditation requirements for lead-based
11 paint activities for training providers;

12 (b) Establish work practice standards for conduct of lead-based
13 paint activities;

14 (c) Establish certification requirements for individuals and firms
15 engaged in lead-based paint activities including provisions for
16 recognizing certifications accomplished under existing certification
17 programs;

18 (d) Require the use of certified personnel in all lead-based paint
19 activities;

20 (e) Be revised as necessary to comply with federal law and rules
21 and to maintain eligibility for federal funding;

22 (f) Facilitate reciprocity and communication with other states
23 having a lead-based paint certification program;

24 (g) Provide for decertification, deaccreditation, and financial
25 assurance for a person certified by or a training provider accredited
26 by the department; and

27 (h) Be issued in accordance with the administrative procedure act,
28 chapter 34.05 RCW.

29 (3) The department may accept federal funds for the administration
30 of the program.

31 (4) This program shall equal, but not exceed, legislative authority
32 under federal requirements as set forth in Title IV of the toxic
33 substances control act (15 U.S.C. Sec. 2601 et seq.), the residential
34 lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et
35 seq.), and Title X of the housing and community development act of 1992
36 (P.L. 102-550).

37 (5) Any rules adopted by the department shall be consistent with
38 federal laws, regulations, and requirements relating to lead-based

1 paint activities specified by the residential lead-based paint hazard
2 reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the
3 housing and community development act of 1992 (P.L. 102-550), and rules
4 adopted pursuant to chapter 70.105D RCW, to ensure consistency in
5 regulatory action. The rules may not be more restrictive than
6 corresponding federal and state regulations unless such stringency is
7 specifically authorized by this chapter.

8 NEW SECTION. **Sec. 4.** (1) The department shall establish a program
9 for certification of persons involved in lead-based paint activities
10 and for accreditation of training providers in compliance with federal
11 laws and rules.

12 (2) Rules adopted under this section shall:

13 (a) Establish minimum accreditation requirements for lead-based
14 paint activities for training providers;

15 (b) Establish work practice standards for conduct of lead-based
16 paint activities;

17 (c) Establish certification requirements for individuals and firms
18 engaged in lead-based paint activities including provisions for
19 recognizing certifications accomplished under existing certification
20 programs;

21 (d) Require the use of certified personnel in any lead-based paint
22 hazard reduction activity;

23 (e) Be revised as necessary to comply with federal law and rules
24 and to maintain eligibility for federal funding;

25 (f) Facilitate reciprocity and communication with other states
26 having a lead-based paint certification program;

27 (g) Provide for decertification, deaccreditation, and financial
28 assurance for a person certified or accredited by the department; and

29 (h) Be issued in accordance with the administrative procedure act,
30 chapter 34.05 RCW.

31 (3) This program shall equal, but not exceed, legislative authority
32 under federal requirements as set forth in Title IV of the toxic
33 substances control act (15 U.S.C. Sec. 2601 et seq.), the residential
34 lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et
35 seq.), 40 C.F.R. Part 745 (1996), Subparts L and Q, and Title X of the
36 housing and community development act of 1992 (P.L. 102-550).

1 (4) Any rules adopted by the department shall be consistent with
2 federal laws, regulations, and requirements relating to lead-based
3 paint activities specified by the residential lead-based paint hazard
4 reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the
5 housing and community development act of 1992 (P.L. 102-550), and rules
6 adopted pursuant to chapter 70.105D RCW, to ensure consistency in
7 regulatory action. The rules may not be more restrictive than
8 corresponding federal and state regulations unless such stringency is
9 specifically authorized by this chapter.

10 (5) The department may accept federal funds for the administration
11 of the program.

12 NEW SECTION. **Sec. 5.** The department shall adopt rules to:

13 (1) Establish procedures and requirements for the accreditation of
14 lead-based paint activities training programs including, but not
15 limited to, the following:

- 16 (a) Training curriculum;
- 17 (b) Training hours;
- 18 (c) Hands-on training;
- 19 (d) Trainee competency and proficiency;
- 20 (e) Training program quality control;
- 21 (f) Procedures for the reaccreditation of training programs;
- 22 (g) Procedures for the oversight of training programs; and
- 23 (h) Procedures for the suspension, revocation, or modification of
24 training program accreditations, or acceptance of training offered by
25 an accredited training provider in another state or Indian tribe
26 authorized by the environmental protection agency;

27 (2) Establish procedures for the purposes of certification, for the
28 acceptance of training offered by an accredited training provider in a
29 state or Indian tribe authorized by the environmental protection
30 agency;

31 (3) Certify individuals involved in lead-based paint activities to
32 ensure that certified individuals are trained by an accredited training
33 program and possess appropriate educational or experience
34 qualifications for certification;

35 (4) Establish procedures for recertification;

36 (5) Require the conduct of lead-based paint activities in
37 accordance with work practice standards;

1 (6) Establish procedures for the suspension, revocation, or
2 modification of certifications; and

3 (7) Establish requirements for the administration of third-party
4 certification exams;

5 (8) Use laboratories accredited under the environmental protection
6 agency's national lead laboratory accreditation program;

7 (9) Establish work practice standards for the conduct of lead-based
8 paint activities for:

9 (a) Inspection for presence of lead-based paint;

10 (b) Risk assessment; and

11 (c) Abatement;

12 (10) Establish an enforcement response policy that shall include:

13 (a) Warning letters, notices of noncompliance, notices of
14 violation, or the equivalent;

15 (b) Administrative or civil actions, including penalty authority,
16 including accreditation or certification suspension, revocation, or
17 modification; and

18 (c) Authority to apply criminal sanctions or other criminal
19 authority using existing state laws as applicable.

20 The department shall prepare and submit a biennial report to the
21 legislature regarding the program's status, its costs, and the number
22 of persons certified by the program.

23 NEW SECTION. **Sec. 6.** The lead paint account is created in the
24 state treasury. All receipts from section 7 of this act shall be
25 deposited into the account. Moneys in the account may be spent only
26 after appropriation. Expenditures from the account may be used only
27 for the purposes of this chapter.

28 NEW SECTION. **Sec. 7.** (1) The department shall collect a fee in
29 the amount of twenty-five dollars for certification and recertification
30 of lead paint firms, inspectors, project developers, risk assessors,
31 supervisors, and abatement workers.

32 (2) The department shall collect a fee in the amount of two hundred
33 dollars for the accreditation of lead paint training programs.

34 NEW SECTION. **Sec. 8.** (1)(a) The director or the director's

1 designee is authorized to inspect at reasonable times and, when
2 feasible, with at least twenty-four hours prior notification:

3 (i) Premises or facilities where those engaged in training for
4 lead-based paint activities conduct business; and

5 (ii) The business records of, and take samples at, the businesses
6 accredited or certified under this chapter to conduct lead-based paint
7 training or activities.

8 (b) Any accredited training program or any firm or individual
9 certified under this chapter that denies access to the department for
10 the purposes of (a) of this subsection shall be subject to
11 deaccreditation or decertification under section 4 of this act.

12 (2)(a) The director or the director's designee is authorized to
13 inspect premises or facilities where federal funds have been used for
14 conducting lead-based paint activities, at reasonable times and after
15 consent to inspection is given with at least forty-eight hours prior
16 notification of the inspection.

17 (b) For the purposes of (a) of this subsection, consent to inspect,
18 solely for the purposes of lead-based paint activities, shall be given
19 whenever the premise or facility is owned or operated by the state, a
20 city, a town, a county, a housing authority created under chapter 35.82
21 RCW, or a community action agency designated in the state federal
22 community service block grant plan under the authority of RCW
23 43.63A.115, and federal funds for the purposes of lead-based paint
24 activities were applied for, received, or expended regarding that
25 premise or facility.

26 (c) For the purposes of (a) of this subsection, consent to inspect,
27 solely for the purposes of lead-based paint activities, shall be given
28 by any person or entity who applied for, received, or expended federal
29 funds for lead-based paint activities regarding that premise or
30 facility, in order to determine compliance with the statutes and rules
31 pertaining to lead-based paint activities.

32 (d) The inspection authority granted under this subsection (2)
33 expires ninety days after the completion of a federally funded lead-
34 based paint activity.

35 (3) Prior to receipt of federal lead-based paint abatement funding,
36 all premise or facility owners shall be notified by any entity that
37 receives and disburses the federal funds that an inspection may be

1 conducted. If a premise or facility owner does not wish to have an
2 inspection conducted, that owner will not be eligible to receive lead-
3 based paint abatement funding.

4 NEW SECTION. **Sec. 9.** (1) The department is designated as the
5 official agency of this state for purposes of cooperating with, and
6 implementing the state lead-based paint activities program under the
7 jurisdiction of the United States environmental protection agency.

8 (2) No individual or firm can perform, offer, or claim to perform
9 lead-based paint activities without certification from the department
10 to conduct these activities.

11 (3) The department may deny, suspend, or revoke a certificate for
12 failure to comply with the requirements of this chapter or any rule
13 adopted under this chapter. No person whose certificate is revoked
14 under this chapter shall be eligible to apply for a certificate for one
15 year from the effective date of the final order of revocation. A
16 certificate may be denied, suspended, or revoked on any of the
17 following grounds:

18 (a) A risk assessor, inspector, contractor, project designer, or
19 worker violates work practice standards established by the United
20 States environmental protection agency or the United States department
21 of housing and urban development governing work practices and
22 procedures; or

23 (b) The certificate was obtained by error, misrepresentation, or
24 fraud.

25 (4) Any person convicted of violating any of the provisions of this
26 chapter is guilty of a misdemeanor. A conviction is an unvacated
27 forfeiture of bail or collateral deposited to secure the defendant's
28 appearance in court, the payment of a fine, a plea of guilty, or a
29 finding of guilt on a violation of this chapter, regardless of whether
30 imposition of sentence is deferred or the penalty is suspended, and
31 shall be treated as a violation conviction for purposes of
32 certification forfeiture under this chapter. Violations of this
33 chapter include:

34 (a) Failure to comply with any requirement of this chapter;

35 (b) Failure or refusal to establish, maintain, provide, copy, or
36 permit access to records or reports as required;

37 (c) Obtaining certification through fraud or misrepresentation;

1 (d) Failure to obtain certification from the department and
2 performing work requiring certification at a job site; or
3 (e) Fraudulently obtaining certification and engaging in any lead-
4 based paint activities requiring certification.

5 NEW SECTION. **Sec. 10.** The department's duties under this act are
6 subject to the availability of sufficient funding from the federal
7 government for this purpose. The director or his or her designee shall
8 seek funding of the department's efforts under this chapter from the
9 federal government. By October 15th of each year, the director shall
10 determine if sufficient federal funding has been provided or guaranteed
11 by the federal government. If the director determines sufficient
12 funding has not been provided, the department shall cease efforts under
13 this chapter due to the lack of federal funding.

14 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act
15 constitute a new chapter in Title 70 RCW."

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By Senators Hargrove, Morton, Doumit

ADOPTED 03/11/2003

16 On page 1, line 2 of the title, after "activities;" strike the
17 remainder of the title and insert "adding a new chapter to Title 70
18 RCW; and prescribing penalties."

--- END ---